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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,288	02/28/2002	Naoki Nakanishi	10873.887USWO	4606
52835	7590	05/08/2006	EXAMINER	
HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902-0902 MINNEAPOLIS, MN 55402			AGUSTIN, PETER VINCENT	
			ART UNIT	PAPER NUMBER
			2627	

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/070,288

Applicant(s)

NAKANISHI ET AL.

Examiner

P. Agustin

Art Unit

2627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

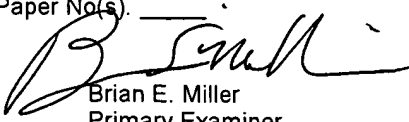
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


Brian E. Miller
Primary Examiner
Art Unit 2627

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed April 17, 2006 have been fully considered but are not found persuasive.

The Applicant argues on page 2, last two lines thru page 2, first paragraph that the Yamazaki reference does not disclose a second hologram that both divides an emitted light beam from a laser into a main beam and two sub beams and diffracts a reflected main beam that has previously been diffracted by a first hologram. The Examiner disagrees. Figure 6, element 28b of Yamazaki corresponds to the claimed "emitted beam dividing portion". The Applicant is directed to Figure 2, element 8a, which is a grating that divides the laser beam into 0-order, +1-order & -1-order beams, as described in column 2, lines 1-7. Note that Figure 6 is simply an improvement of the prior art device shown in Figure 2; therefore, element 28b of Figure 6 is understood to have the same properties/characteristics as element 8a of Figure 2. The description for element 28b as having the same properties/characteristics as element 8a was simply omitted, but nowhere in Yamazaki does it specify that element 28b does not divide an emitted light beam from a laser into a main beam and two sub beams, as alleged by the Applicant. Furthermore, as clearly shown in Figure 6, the hologram 28b diffracts the reflected beam coming from hologram 28a (corresponding to the claimed "reflected beam dividing portion").

In response to Applicant's arguments on page 2, paragraph 2 that the second hologram (28b) taught by Yamazaki does not divide an emitted light beam from the laser into three beams; and rather, the first hologram (28a) divides a reflected light beam into a main beam and two sub beams, the Applicant is directed again to the prior art device of Figure 2, element 8b, which "gives the the +1-order beam and -1-order beam opposite powers" (column 2, lines 5-7). Likewise, element 28a of Figure 6 is understood to have the same properties/characteristics as element 8b of Figure 2. Also note that this description is repeated for element 28a in column 4, lines 39-43, i.e., "the first hologram 28a diffracts the laser beam reflected by the optical record medium 23 and gives positive and negative powers to +1-order diffracted beam and -1-order diffracted beam, respectively." Based on this description, it is clear that +1-order and -1-order diffracted beams already exist before they even reach the hologram 28a. The hologram 28a simply gives the positive and negative powers to these beams. There is no mention in Yamazaki that the hologram 28a actually divides the reflected light beam into a main beam and two sub beams, as alleged by the Applicant.

In response to Applicant's arguments on page 2, paragraph 3 that Yamazaki teaches away from the optical semiconductor device and optical information processing device of claims 1 and 16, the Applicant is directed to MPEP § 2131.05, which states that whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. See *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998), see also *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999). Regardless, the Examiner disagrees that Yamazaki teaches away from the claimed invention or from using a three-beam method, as alleged by the Applicant. Yamazaki describes the drawbacks revealed when a phase-change type recording medium is used with the device of Figure 2, which drawbacks can be avoided by using the configuration shown in Figure 6, wherein astigmatism is introduced by the hologram optical element 28.